IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

ARBITRATION PETITION NO.308 OF 2004

Mrs.Heena Jatin Desai. ... Petitioner

vs.

A.C.Chokshi Share Borker Pvt. Ltd. & Anr. .... Respondents.

AND

ARBITRATION PETITION NO.309 OF 2004

Mr.Jatin P. Desai. ... Petitioner

vs.

A.C.Chokshi Share Borker Pvt. Ltd. & Anr. .... Respondents.

Mr.P.K.Samdhani with S.J.Purohit i/b. Purohit & Co., for Petitioner.

Mr.Sham Diwan with Jayant Gaikwad i/b. Ajay Khandhar & Co. for Respondents.

CORAM: D.K.DESHMUKH,J.

DATED: 23rd August,2005

P.C.:-

1. Both the petitions challenge the same Award made by the Arbitral Tribunal of the Bombay Stock Exchange. The facts that are

relevant and material are that admittedly the Respondent no.1 is a licensed stock broker of the Bombay Stock Exchange. The petitioner in both the petitions are husband and wife. Both of them had independent contracts with the broker. The broker was also maintaining their separate accounts. At some point of time while there was a credit balance in the account of the husband, the husband stopped dealings in that account, but the dealings were continued in the account of the Wife. As a result of continuous dealings, there was debit balance in the account of the Wife and therefore, the arbitration clause was invoked. The case of the broker was that though there were separate accounts maintained by the husband and wife, there was oral understanding between the parties that the liability of the husband and wife would be joint and several in relation to the transactions in both the accounts. Before the Arbitral Tribunal both the parties have filed their documents, oral evidence was also led. The Arbitral Tribunal of the Stock Exchange has appreciated the oral and documentary evidence produced on record and by a reasoned Award has recorded the findings of the facts that there was oral understanding between the parties and though the husband and wife have separate accounts and have separate contract with the broker, their liability would be joint and several. The submission of the petitioners in both the petitions for challenging the Award is that what is relied on is the oral contract of joint and several liability, however,

Section 7 of the Arbitration and Conciliation Act,1996 requires written arbitration agreement and therefore, according to the petitioners, the Award is not valid. In my opinion the submission is not well founded. There is written agreement between the parties which is contained in the contract entered into between the wife and the broker. It was implied term in the written contract which was agreed to between the parties orally that if there is any debit balance in the account of the wife, both the husband and wife would be jointly and severally liable. It is an admitted position that the arbitration clause was contained in both the agreement i.e. one entered into between the wife and the broker and another entered into between the husband and the broker. The arbitration clause in the agreement of the husband was not invoked because the credit balance in that account was transferred to the account of the Wife and even after transferring of that credit balance in the account of the Wife, there was a debit balance. The arbitration clause in the agreement with the wife was invoked. As admittedly there is an arbitration clause between the husband and the broker also, there is no jurisdictional error in the Award. It is further to be seen that the finding that there was oral understanding between the parties is the finding of fact recorded by the Arbitral Tribunal after appreciating the evidence on record. The entire Award turns on appreciation of oral and documentary evidence and the findings recorded by the Arbitral Tribunal are essentially the findings of the

facts. The Arbitrators are the members of the arbitral tribunal appointed by the trade body which controls the trade to which the parties relate and the Award made by the Arbitral Tribunal of such a trade body is not to be lightly interfered with. Taking overall view of the matter therefore, in my opinion, it being well considered award made by the Arbitral tribunal of the trade body, the Award cannot be interfered with in the extremely limited jurisdiction of this Court under Section 34 of the Arbitration & Conciliation Act,1996. In the result, therefore, both the petitions fail and are dismissed. The petitioner in both the petitions are directed to pay costs of the respective petitions to the Respondent no.1 as incurred by the Respondent no.1.